

section does not prohibit truthful representations in advertising and labeling of the percentage of content of any metallic substances in such products (e.g., contains 20 percent powdered aluminum) it does prohibit with respect thereto the use of representations such as, but not limited to, the following:

"Plastic Steel."
 "Dries to steel."
 "Hardens into metal."
 "Steel in paste form."
 "Liquid aluminum."
 "Instant aluminum."
 "Real metallic putty."
 "Fluid Steel."

[Guide 1]

§ 235.2 Use of the term "solder" or "weld."

Products which, when used, do not form a metallic seal or bond, shall not be represented as solders or as welding products unless it is clearly disclosed in connection therewith that they are nonmetallic, as for example, "Plastic Solder" or "Plastic Weld." A "solder" or "weld" product which is nonmetallic shall not be represented as producing a metallic seal or bond. This section does not prohibit an accurate representation of the percentage of metallic substance contained in a product. [Guide 2]

§ 235.3 Use of the word "porcelain."

(a) The word "porcelain" shall not be used to designate in brand names or otherwise any product which, after application, does not possess all of the chemical and physical properties of porcelain. Under this section products of the type herein described shall not be represented as being, among other things:

"Porcelain."
 "Porcelain Glaze."
 "Liquid Porcelain."
 "Porcelain in Paste Form."
 "Plastic Porcelain."
 "Porcelain restorer."
 "Porcelain renewer."

(b) This section does not prohibit truthful representations of the actual percentage of porcelain contained in an industry product as, for example,

"Contains 25% powdered porcelain."

[Guide 3]

§ 235.4 Epoxy adhesives.

(a) No product shall be represented as being an epoxy adhesive unless the epoxy component thereof is derived from an epoxide or oxirane which, when applied in use, chemically reacts with a hardener or curing agent to form a substantially infusible and insoluble bond.

(b) No product containing an epoxy shall be represented as having the characteristics and capabilities of an epoxy adhesive, where the epoxy component present in the product is in an amount not sufficient to produce the characteristics and capabilities represented.

(c) No representation shall be made that the epoxy component in an industry product is present to produce the characteristics and capabilities of an epoxy adhesive where such component is not productive of such characteristics and capabilities, but is present for a different purpose and use. [Guide 4]

§ 235.5 Use of the word "rubber," etc.

(a) The word "rubber" or other words denominating rubber shall not be used to designate, in brand names or otherwise, any product which, after application, does not possess the essential characteristics of rubber. Under this section such a product shall not be represented as, for example, "Rubber," "Plastic Rubber," "Liquid Rubber," etc.

(b) This section does not prohibit truthful representation of the actual percentage of rubber contained in a product. [Guide 5]

§ 235.6 Misrepresentation (general).

(a) No representation shall be made in any manner respecting any adhesive products to which this part is applicable which is likely to mislead or deceive purchasers as to their nature, composition, characteristics, uses, effectiveness, capabilities, durability, toughness, hardness, adhesive strength, lasting effect, thermal or electrical properties, resistance to water, steam, gas, or chemicals, or in any other material respect.

(b) Among the representations prohibited by this section are the following:

(1) Representations that a product will seal, repair or mend “anything” when, in fact, there are certain materials which it cannot seal, repair or mend.

(2) Representations that a product is proof against or will withstand any specified temperature when in fact the product is adversely affected in any way when subjected to such temperature for any period of time.

(3) Representations that a product will effect permanent repairs if, in fact, the repairs made by use of the product will not last as long as the product so repaired.

(4) Representations that a product makes any product like new if it does not actually restore the part thereof repaired to its original new condition. [Guide 6]

§ 235.7 Guarantees, warranties, etc.

Industry members shall not represent in advertising or otherwise that a product is “guaranteed” without a clear and conspicuous disclosure in close conjunction with such representation of:

- (a) The nature and extent of the guarantee; and
- (b) Any material conditions or limitations in the guarantee which are imposed by the guarantor; and
- (c) The manner in which the guarantor will perform thereunder; and
- (d) The identity of the guarantor.

NOTE: The Commission’s April 26, 1960 Guides Against Deceptive Advertising of Guarantees (25 FR 3772) furnish additional guidance respecting guarantee representations and are to be considered as supplementing this section. Copies are available upon request.

[Guide 7]

§ 235.8 Placing deceptive material in the hands of others.

Manufacturers and distributors shall not place in the hands of wholesalers, jobbers, retailers, or others, promotional material by or through which they may deceive or mislead the purchasing and consuming public concerning any product. [Guide 8]

PART 238—GUIDES AGAINST BAIT ADVERTISING

Sec.

238.0 Bait advertising defined.

238.1 Bait advertisement.

238.2 Initial offer.

238.3 Discouragement of purchase of advertised merchandise.

238.4 Switch after sale.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 32 FR 15540, Nov. 8, 1967, unless otherwise noted.

§ 238.0 Bait advertising defined.¹

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

§ 238.1 Bait advertisement.

No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. [Guide 1]

§ 238.2 Initial offer.

(a) No statement or illustration should be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised product to another.

(b) Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception. [Guide 2]

¹For the purpose of this part “advertising” includes any form of public notice however disseminated or utilized.